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*Attorneys for Plaintiff, A YOU SOW*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

AS YOU SOW, a 501(c)(3) Nonprofit  
Corporation,

Plaintiff,

vs.

ETSY, INC.,

Defendants.

Case No.: 3:24-cv-04203-MMC

**DECLARATION OF RACHEL S.  
DOUGHTY IN SUPPORT OF MOTION  
TO APPROVE SETTLEMENT**

Judge: Hon, Maxine M. Chesney  
Date: April 25, 2025  
Time: 9:00 a.m.  
Place: Courtroom 7

Action Filed: June 7, 2024, removed July 11,  
2024  
Trial Date: none set

1 I, Rachel S, Doughty, hereby declare and state:

2 1. If sworn as a witness, I could and would testify to my personal knowledge of the facts set  
3 forth herein.

4 2. I am an attorney licensed to practice in California. My firm, Greenfire Law, PC, represents  
5 plaintiff AS YOU SOW (hereafter “AYS”). I have personal knowledge of the facts declared herein  
6 or have been informed by those individuals who have personal knowledge of the facts and will  
7 competently testify to them if called upon to do so.

8 3. AYS filed suit in the California Superior Court for the County of Alameda on March 18,  
9 2024, pursuant to Health and Safety Code section 25249.7, subdivision (d) to promote awareness of  
10 and prevent consumer exposures to mercury and mercury compounds in skin lightening products  
11 purchased by California consumers on Defendant ETSY, INC.’s (“Etsy”) online platform and  
12 website [www.etsy.com](http://www.etsy.com) (“Etsy.com”).

13 4. Etsy’s online platform and website facilitates the sale of products by third parties to end-  
14 users or online customers. In 2023, this platform was used by over 6 million sellers and 91 million  
15 buyers. Third party sellers would not have the ability to reach Etsy’s billions of customers,  
16 including those in California, without access to the marketplace on Etsy.com. Attached hereto as  
17 **Exhibit F** is a true and correct copy of a press release, dated August 2, 2023, taken from Etsy’s  
18 website providing financial information about the company for second quarter 2023. The press  
19 release is available at: [https://investors.etsy.com/press-releases/press-release-details/2023/Etsy-Inc.-](https://investors.etsy.com/press-releases/press-release-details/2023/Etsy-Inc.-Reports-Second-Quarter-2023-Results/default.aspx)  
20 [Reports-Second-Quarter-2023-Results/default.aspx](https://investors.etsy.com/press-releases/press-release-details/2023/Etsy-Inc.-Reports-Second-Quarter-2023-Results/default.aspx) (last accessed 3/9/2025).

21 5. AYS identified multiple brands of skin lightening or brightening products containing  
22 mercury with reported sales to California consumers through Etsy’s website prior to January 24,  
23 2025. These products, as shown in **Table 1** below (“Products”), did not carry the warning required  
24 prior to exposure by California’s Proposition 65.

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**Table 1: Skin Lightening Settlement “Products”**

Deluxe Nadinola Bleaching Cream	La Magia Blanca de Michelle Marie Crema
Due Beauty Cream	Blanquedora
Faiza	Parley Beauty Cream
La Tia Mana Crema Limpiadora y Curativa	Shivanya Beauty Cream
Miss Key Crema Blanqueadora	La Unica Cream Casa Botanica
Jing Zhuang Jinyiqi/ “Yiqi”	

6. Tests of samples from the Products found mercury at concentrations up to 13,000 parts per million (ppm).

7. Based on partial sales data for the Products at issue that Etsy provided, there have been dozens of face creams with mercury sold into California from listings on Etsy’s website without a Proposition 65 warning.

8. Etsy had consolidated revenue for second quarter 2023 of \$628.9 million. *See* Exhibit F.

### **As You Sow Litigation**

9. On January 18, 2024, AYS served Etsy and the requisite public enforcement agencies with a 60-Day Notice of Violation required under Proposition 65 to Etsy, identifying listings of skin brightening creams containing mercury and mercury compounds on Etsy.com to customers or consumers in California without any Proposition 65 warning.

10. On March 15, 2024, AYS served Etsy and the requisite public enforcement agencies with a supplemental 60-Day Notice of Violation identifying additional Etsy.com listings of creams that contained mercury or mercury compounds for sale to customers or consumers in California without Proposition 65 warnings.

11. AYS timely served each of the Notices on the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000.

12. AYS does not presently have any information or belief that any public enforcer has commenced or is diligently prosecuting allegations set forth in the notices.

13. AYS commenced a lawsuit in Alameda Superior Court against Etsy for unwarned sales of mercury in skin brightening creams on June 7, 2024 (24CV078868).

14. On July 11, 2024, Etsy filed a Notice of Removal to federal district court, and the matter was assigned to the Honorable Judge Maxine M. Chesney (3:24-cv-04203-MMC). Etsy additionally filed motions to dismiss the proceedings (ECF No. 7) and to compel arbitration between the parties (ECF No. 5). AYS filed a motion to remand (ECF No. 18). Briefing was completed in September 2024 and the hearing for all three motions was scheduled on October 11, 2024. The hearing was vacated as to all three motions by the Court and a Case Management Conference was scheduled for January 24, 2025. (ECF No. 35).

#### **Settlement**

15. Counsel for the parties actively engaged in arm's-length settlement negotiations for several months.

16. On December 26, 2024, the parties reached a tentative settlement agreement. The parties reached this agreement in accordance with general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5. The parties notified the Court on January 15, 2025, via the joint filing of a Notice of Settlement of a settlement agreement in principle. (ECF No. 38).

17. On January 22, 2025, the parties filed a joint proposed schedule for the filing of a Motion to Approve. (ECF No. 40).

18. On February 24, 2025, the parties executed a written settlement of the matter with terms meeting the requirements of Proposition 65 in the form of a consent judgment and jointly filed a second notice with this Court on February 25, 2025. (ECF No. 45).

19. AYS notified the California Attorney General ("AG") as required by California law (Cal. Code Regs. tit. 11, § 3003) as well as a party-stipulated order of this Court (ECF No. 44).

20. The AG requested one change. The parties executed a draft consent judgment (“Settlement”) with that one change on March 4, 2025.

21. A true and correct copy of the fully executed Settlement is attached hereto as **Exhibit A**. The Settlement requires Etsy, for the term of the Settlement, to prevent third-party sellers from listing the Products for sale on Etsy.com to California consumers, unless and until Etsy has confirmed that the Product does not contain mercury and shared that information with AYS. Exhibit A, section 2.

22. The Settlement resolves AYS’s Proposition 65 claims brought in the public interest against Etsy as to the Products sold into California prior to the Effective Date<sup>1</sup>. Additionally, AYS in its individual capacity, agreed to a release of Etsy:

from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted by the AYS Releasors against the Etsy Released Parties based on the claims made in the Notices and the Complaint for the handling, use, sale, distribution, or consumption of any product listed in the Notices or Complaint, in California, prior to the Effective Date

Ex. A, section 4.1. And Etsy agreed to a release of AYS: “for any and all actions taken or statements made by AYS and its attorneys and other representatives related to enforcement of Proposition 65, the Sherman Act, and California’s Unfair Competition Law in connection with AYS’s prosecution of this case against the Etsy Releasors.” Ex. A, section 4.3.

23. The Settlement also requires that Etsy pay penalties totaling \$24,300. This was calculated based upon the declaration of Alexandra Droz, the Director, Assistant General Counsel, Regulatory and Competition at Etsy.

24. A true and correct copy of the declaration of Ms. Droz is attached hereto as **Exhibit B**.

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<sup>1</sup> The Effective Date is the date on which the Proposed Consent Judgment is entered as a judgment of this Court. (Section 1.8 of Settlement attached hereto as Exhibit A).

1 25. The total penalty per sale greatly exceeds the amount of the sale price of the Products and is  
2 thus designed to be a deterrent to Etsy and others contemplating offering Products or similar skin  
3 lightening products to consumers in California.

4 26. Since the beginning of this litigation, skin lightening and brightening creams with mercury  
5 were available on Etsy's website from time to time. This litigation has in fact served as a deterrent  
6 on Etsy, as AYS has found none of the Products listed on Etsy.com recently.

7 **Reasonableness of Rates, Fees and Expenses**

8 27. The total agreed payment for fees and costs for this case is \$179,738. The actual lodestar,  
9 after billing judgment, is over half a million dollars. Therefore, counsel for AYS, through this  
10 settlement will recover far less than the lodestar.

11 28. Plaintiff's counsels' and paraprofessionals' rates are at or below the market rates in the San  
12 Francisco Bay Area. The rate for the most experienced attorneys in this case was \$1,141/hour. This  
13 is less than has recently been approved in other Proposition 65 cases. In *Wozniak v. Amazon.com,*  
14 *Inc.*, (County of San Francisco Superior Court Case No. CGC-21-694849) a Proposition 65 case  
15 settled in 2023, lead counsel recovered a rate of \$1,450/hour in a settlement accepted by San  
16 Francisco Superior Court. **Exhibit G** is a true and correct copy of the Consent Judgment entered in  
17 the Wozniak matter, and **Exhibit H** is a true and correct copy of the declaration of the lead attorney  
18 in that matter, establishing his rates. Each of these exhibits were downloaded by me from the  
19 County of San Francisco Superior Court's Case Query system.

20 29. Paraprofessionals in the AYS matter were billed at a maximum of \$258 per hour. In the  
21 *Wozniak v. Amazon* matter paraprofessionals rates of up to \$385/hour were accepted by the court.

22 30. On December 23, 2024, attorney Richard Drury prepared a declaration in support of a fee  
23 motion by Greenfire Law in another matter, a true and correct copy of which is attached hereto as  
24 **Exhibit C**. Mr. Drury reviewed and compared rates for environmental practices in the San  
25 Francisco Bay Area, noting partner rates well over \$1,000 and average associate rates of \$360 to  
26 \$800 per hour.

1 31. Timekeeping records in this case were kept contemporaneously. It is Greenfire Law's  
2 practice at all times to keep time contemporaneously; Greenfire Law attorneys use Clio software,  
3 which includes a timer.

4 32. **Exhibit D** is a true and correct copy of the summary of hours by biller in the *As You Sow v.*  
5 *Etsy* state trial court and federal district court matters and the rate sought for each, showing billing  
6 judgment applied to hours and lodestar amount. In sum, Greenfire Law expended 712.9 hours in  
7 this matter and seeks just 664.6 hours. I am familiar with and have reviewed the Laffey Matrix. The  
8 Laffey Matrix is referenced by Mr. Drury in Exhibit C to this declaration as a benchmark to  
9 determine reasonable market rates. Mr. Drury's declaration specifically addresses the market rates  
10 for me, referencing the Laffey Matrix. And on that and my own personal experience, I am informed  
11 and believe that such rates are reasonable market rates for the Bay Area.

12 33. **Exhibit E** comprises of true and correct copies of detailed billing records including a  
13 complete list of tasks related to this litigation completed to date.

14 **Attorneys**

15 34. I am lead counsel for the AYS matter and I managed staffing of the case, following my  
16 usual practice of pushing work down to the lowest cost-effective biller, requiring contemporaneous  
17 keeping of time records, and minimizing legal work while providing excellent services for our  
18 clients.

19 35. I am licensed to practice law and am in good standing in California. I received my J.D. from  
20 The University of Virginia in 2004. I founded Greenfire Law in 2011. Greenfire Law primarily  
21 represents individual citizens and nonprofit organizations in public-interest litigation. Before  
22 founding Greenfire Law, I worked at Paul Hastings, LLP, Gary Davis and Associates, and  
23 WildLaw. I have civil litigation experience in California and North Carolina, I am admitted to the  
24 Ninth Circuit Court of Appeals as well as the federal District of D.C. Court, and I have appeared pro  
25 hac vice in federal district courts in Mississippi, Alabama, and Florida, as well as before the Fourth  
26 and Eleventh Circuit Courts of Appeal. From 2023 to 2025 I was selected to Super Lawyers, which  
27 is an exclusive list including the top 5% of attorneys in the United States, after passing a thorough  
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1 selection process based on peer recognition and professional achievement. In 2023, I was awarded  
2 the Clay Award for Consumer Protection and the award for Top Verdicts 2022 by the Daily Journal  
3 for my work as lead counsel in the *Le v. Amazon.com, Inc.* matter, 76 Cal.App.5th 200 (2022).  
4 Additionally, I was lead counsel for petitioner Story of Stuff Project before the California State  
5 Water Resources Control Board regarding BlueTriton Brands' removal of water from the San  
6 Bernardino National Forest. Order WR 2023-0042. I also was trial counsel in a significant case  
7 before the Northern District of California last year, establishing a Constitutional right of pre-trial  
8 detainees to sunlight. Prior to law school, I was a fellow at the Environmental Protection Agency, in  
9 the Office of Water, where I received commendations for my work on hypoxia in the Gulf of  
10 Mexico caused by land use in the Mississippi River Basin. I later wrote my master's thesis on the  
11 same topic. I have spoken at various conferences and events on various environmental topics,  
12 including Proposition 65, and have published in both scientific and legal scholarly journals. Prior to  
13 law school, I earned a B.S. from the University of Tennessee in biochemistry, cellular, and  
14 molecular biology and an M.S. from Cornell University in natural resources management, with a  
15 minor focus on biogeochemistry.

16 36. Jessica Blome is a shareholder at Greenfire Law. Ms. Blome received her J.D. in 2007 from  
17 the University of Iowa College of Law in Iowa City, Iowa. Prior to joining Greenfire Law, she  
18 worked for the San Francisco Ethics Commission as the Deputy Director of Enforcement and Legal  
19 Affairs. Five staff members, including two attorneys, reported directly to her, with responsibility for  
20 twenty-two total employees. As part of that office's duties and responsibilities, Ms. Blome's team  
21 was responsible for administering and enforcing several laws, including the City's campaign  
22 finance, public corruption, and open government ordinances. Members of the public would file  
23 complaints with the Ethics Commission, and together with her team, she would review and  
24 investigate complaints to determine if enforcement was necessary. Before the Ethics Commission,  
25 Ms. Blome worked as a senior staff attorney for the Animal Legal Defense Fund (ALDF) for three  
26 years in the Litigation Program. For the ALDF, she represented the organization and its members in  
27 environmental, animal rights, and public access litigation, including lawsuits to compel counties to  
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1 comply with mandatory obligations under state and local laws. Prior to joining ALDF, Ms. Blome  
2 worked for the Missouri Attorney General in the Agriculture and Environment Division, where she  
3 litigated civil enforcement cases on behalf of the Missouri Departments of Natural Resources and  
4 Agriculture. At the Attorney General's Office, she specialized in complex litigation and developed  
5 expertise in the fields of safe drinking water, clean (surface and ground) water, solid waste (open  
6 dumping and landfills), hazardous waste remediation and restoration, and natural resource damage  
7 recovery (heavy metals, petro-chemicals). In Missouri, Ms. Blome is regarded as an expert in  
8 certain aspects of trial practice, including witness preparation, deposition examination, and trial  
9 tactics. When working for the State of Missouri, she routinely gave continuing legal education  
10 seminars on these topics. She has also guest taught several lectures at the University of Missouri  
11 School of Law on agricultural law, energy law, animal law, and environmental law and the  
12 University of San Francisco, Lewis & Clark Law School, and Vermont Law School on animal law.  
13 She has civil litigation experience in California, Pennsylvania, Oregon, Iowa, Wisconsin, Montana,  
14 and Missouri courts as well as federal courts in California, New York, Nevada, Missouri,  
15 Minnesota, Oregon, and Iowa. She has been lead counsel in many civil environmental and animal  
16 welfare related enforcement cases and open government cases, and has co-counseled in many more  
17 such cases. She manages case strategy, administration, and staffing litigation matters through most  
18 stages of the legal process, including through trial. She is widely regarded as an efficient  
19 practitioner.

20 37. Jennifer Rae Lovko, a Greenfire Law senior associate, received her J.D. from Golden Gate  
21 University School of Law in 2000. Ms. Lovko has substantial civil litigation experience before both  
22 state and federal courts. She has taken over a dozen cases to trial and participated in post-trial  
23 motions practice. In addition to her work as a litigator, Ms. Lovko has been a contributing author in  
24 several Continuing Education of the Bar (CEB) publications. Ms. Lovko assisted in the post-appeal  
25 litigation of the *Lee* matter and in the second *As You Sow* case.

26 38. [Intentionally Omitted]

27 39. [Intentionally Omitted]

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1 40. Cyrus Moshiri, a Greenfire Law associate, received his J.D. from University of California  
2 Los Angeles in 2016. Mr. Moshiri has civil litigation experience both before state and federal  
3 courts. Before joining Greenfire Law, Mr. Moshiri worked as an associate at an international law  
4 firm specializing in labor and employment matters. Mr. Moshiri has also worked as an associate at a  
5 boutique firm representing individuals in civil rights and public interest matters.

6 **Reasonableness of Expenses**

7 41. A total of \$6,900.98 was incurred in costs in the state trial and federal district court matters,  
8 including investigative fees and costs related to processing evidence (\$1,199.43); court fees and  
9 related expenses (\$3,244.88); and professional services costs (\$2,456.67). These costs are not  
10 contested.

11 42. This matter was taken on a completely contingent basis and counsel have not been paid for  
12 the time they have spent litigating this matter.

13 43. AYS recovers penalties under the Settlement and is therefore the prevailing party.  
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15 I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th  
16 day of March, 2025, in Berkeley, California.

17 /s/ Rachel S. Doughty

18 Rachel S. Doughty  
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